THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.35481 of 1997

Date: March 22, 2007

Between:
K.Vijayakumari, wife of K.Bose,
aged 44 years, Superintendent,
University of Health Sciences,
Vijayawada.

… Petitioner.

And

1. The Principal Secretary to Govt.,
   Medical and Health Department,
   Govt., of A.P. Secretariat,
   Hyderabad - 500 022 and 3 others.

… Respondents.

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ORDER:

This writ petition is filed seeking Mandamus to direct the respondents to recast seniority of the petitioner as Senior Assistant/UDC as on 01.3.1986 and place her over and above 4th respondent by setting aside the Circular No.REF. UHS/12943/SIII/94, dated 29.10.1997, of the third respondent by declaring the action of the respondents in rejecting the claim of the petitioner for placing her as

Senior Assistant as on 01.3.1986 over and above the 4th respondent with all consequential benefits, as arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India.

2. The question that falls for consideration is whether the petitioner is entitled to count her seniority with effect from 01.3.1986 or 01.11.1986 as Senior Assistant.

3. The seniority in the cadre of Senior Assistant has already been counted with effect from 01.11.1986. The management of Sidhartha Academy of General and Technical Education (SAGTE), Vijayawada, is maintaining Sidhartha Engineering College, Sidhartha Arts College and some other institutions under its control and there are certain members of staff working in the academy office attending to their duties and responsibilities attached to their individual posts. The management has been running administration of their institutions. The management had intended to establish Sidhartha Medical College also and in that process the petitioner was taken into service by the said management to look after the work pertaining to pre-establishment of the medical college. She was initially appointed as Steno-Typist by the Secretary, Sidhartha Academy, Vijayawada, and joined duty in the office of the academy with effect from 04.7.1980 and was entrusted with work relating to the Sidhartha Medical College proposed to be established by the management. Therefore, she has

been exclusively discharging duties and responsibilities attached to the pre-establishment of the said Sidhartha Medical College from the date of her first appointment. The medical college was established with effect from 01.01.1981. The petitioner was directed to attend the work of the medical college and therefore she was continued to discharge her duties and responsibilities attached to her post even after establishment of the medical college in the academy office. Subsequently, the post which the petitioner was holding was shifted to the office premises of the Sidhartha Medical College where she continued to work under the control of principal of the said medical college from 01-01-1983. Thus, she discharged her duties and responsibilities attached to the post sincerely and to the entire satisfaction of her superior authorities. That being so, the juniors to the petitioner were promoted to higher cadre ignoring her seniority and without following relevant service rules before handing over the said medical college to the control of the University of Health Sciences. The promotion orders issued by the Secretary, Sidhartha Academy dated 29.3.1986 are contrary to service rules and without maintaining *inter se* seniority. She filed a detailed representation in this regard. According to the authorities the same was examined and decided to reject her seniority in the cadre of Senior Assistant as on 21.12.1986 in view of the recommendations of the two men committee at para 11 of chapter III and para 22 of chapter V of the report. Hence, this writ

petition.

4. A detailed counter-affidavit has been filed by the University of Health Sciences denying the allegations made by the petitioner. It is asserted that in view of various representations and litigations before this Court, a two men committee was constituted to examine the cases of the personnel. As on 21.12.1986 the petitioner was to be absorbed in the cadre of Typists and Steno-Typists and her promotion to higher categories have to be regulated from the date of acquisition of decree qualification strictly in accordance with the provision of A.P. Ministerial Service Rules. The committee while considering the issue regarding service rendered under the private management to be treated as qualifying service to reckon 50% of it towards seniority after absorption into University of Health Sciences, has stated that the entire service put in by an employee in the post held by him as on 21.12.1986 should be treated as qualifying service for reckoning 50% of it towards seniority after absorption subject to the condition that he or she is found eligible for absorption against the corresponding post in the University of Health Sciences service. For giving 50% past service benefit, the committee has identified the post which an employee was holding or deemed to have been holding on 21.12.1986 and also the date from which he or she was continuously holding or deemed to have been holding that post in Sidhartha Medical College. The past service rendered in SAGTE office has been ignored. The tentative

seniority list was prepared by the committee in the cadre of Steno and Typists in which the seniority of the petitioner was fixed has been communicated to the petitioner calling objections, if any, on the list to submit within 15 days from the date of receipt of the seniority lists. In response to the tentative seniority list communicated, the petitioner filed objections and the objections have been looked into and since they are not tenable, the committee while considering her case quoted Rule 28 (a) of A.P. Ministerial Service Rules stating that she is not eligible for re-designation/conversion as LDC with effect from 01.3.1986. Since both the rules provide for exception in regard to qualification with differing dates, her objections have been referred to two men committee requesting clarification in the matter. The committee has clarified that the petitioner was appointed as Steno by SAGTE in its office from 04.7.1980, after establishment of Sidhartha Medical College she was appointed as Steno in the college with effect from 01.01.1981 and that the committee has not reckoned the service rendered by her in SAGTE office for the purpose of seniority after absorption into University of Health Sciences service. The committee has also stated that her appointment as Steno-Typist in the Sidhartha Medical College is in accordance with Rule 22 of A.P. Ministerial Service Rules. The committee further stated that according to Rule 28 (a), Typists and Junior Stenos are not eligible for conversion as Junior Assistant (LDCs) or for promotion as Senior Assistants (UDCs) unless

they hold degree qualification and that the proviso in the said rule will not apply to her case as she was appointed as Steno in Sidhartha Medical College which service only was taken into consideration for absorption into University of Health Sciences service and fixation of seniority with effect from 01.01.1981.

5. Learned counsel for the petitioner strenuously contended that the petitioner is governed by A.P. State Subordinate Rules and not by A.P. Ministerial Service Rules. Therefore, the very application of rules by the respondents is uncalled for and thus the committee as well as the respondents have committed erroneous conclusion that the petitioner is not entitled for reckoning her service rendered with the Sidhartha Academy before her absorption into University of Health Sciences.

6. Learned counsel however stated that as per the A.P. State Subordinate Rules the qualification that requires for appointment for L.D.C is Intermediate, whereas, as per the A.P. Ministerial Service Rules the qualification required for appointment of Typist and L.D.C. is graduation. Therefore, once if the rules under the State Subordinate Rules are made applicable, it must be deemed that the petitioner is qualified for being appointed to the post of L.D.C right from the date of her initial appointment i.e., 04.7.1980. This aspect was not considered by the respondents. Therefore, it cannot be said that the petitioner is not entitled for such benefit.

7. It is asserted that the A.P. Ministerial Service Rules have no application to the case of the petitioner. In fact, the Health University has adopted the rules made under the State Subordinate Service Rules *mutatis mutandis,* and therefore, the service conditions of the petitioner are governed by those rules.

8. In view of the above, the petitioner is directed to make a detailed representation before the respondents and the respondents shall look into the same and pass appropriate orders as per law, particularly to examine as to whether the petitioner is governed by the State Subordinate Service Rules or A.P. Ministerial Service Rules for the purpose of deciding her qualifications as on the date of her appointment into the service of the Academy.

9. With the above directions, the writ petition is disposed of. No costs.

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(C.V.RAMULU, J.)

Date: March 22, 2007.
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